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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,646	08/07/2001	Craig M. Janik	81230.502US	7462

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GREENBERG TRAURIG, LLP  
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SUITE 2500  
CHICAGO, IL 60601-1732

EXAMINER

CUMMING, WILLIAM D

ART UNIT	PAPER NUMBER
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2683

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/924,646

Applicant(s)

CRAIG JANIK

Examiner

WILLIAM D. CUMMING

Art Unit

2683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 40-61 is/are pending in the application.
- 4a) Of the above claim(s) 47-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

1. Applicant's election with traverse of restriction in the reply filed on October 19, 2005 is acknowledged. The traversal is on the ground(s) that there must be a serious burden on the examiner in simultaneously searching the independent or distinct. This is not found persuasive, at all, because the serious burden is not just on searching, but also on the total examination of the application, plus the examiner's workload. It is the examiner that determines the burden, not the applicant's attorney. Searching three different inventions, applying references on three different inventions, writing three different Office actions for the three inventions is prima facie a very serious burden on the examiner.

2. The requirement is still deemed proper and is therefore made **FINAL**.

3. Claims 47-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 19, 2005. Applicant's attorney is hereby admonish in trying to say that Group I and II are together. The Office action clearly states that applicants must choose a single invention. Applicant's attorney states in his responds "*the inventions must be independent or distinct,*" which is correct. Then applicant's attorney strangely states "*the invention of Group I, which it is understood will also included the invention of Group II which the Office action has not alleged is 'distinct' from the invention of Group I.*" This

statement would only be understood if one did not understand the word "or". All groups are independent inventions. Nothing more is needed. Plus, if applicant's attorney actually read carefully the Office action, it also states that all groups are also independent and distinct on page one.

### ***Drawings***

4. The drawings are objected to because some figures are not labeled and are not cleared, dark, and wording in the figures can not be read. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "*Replacement Sheet*" or "*New Sheet*" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Allowable Subject Matter***

5. Claims 40-46 are allowed.
6. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

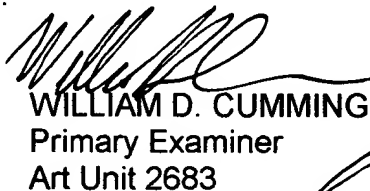
***Conclusion***

7. This application is in condition for allowance except for the above formal matters.
8. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.
9. A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **WILLIAM D. CUMMING** whose telephone number is 571-272-7861. The examiner can normally be reached on Monday-Thursday 11am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
WILLIAM D. CUMMING  
Primary Examiner  
Art Unit 2683

wdc



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